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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-75

UNITED STATES OF AMERICA, ET AL. - Petitioners

versus

ELIZABETH JANE HALL - - - Respondent

BRIEF FOR RESPONDENT IN OPPOSITION

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ELIZABETH JANE HALL - - - *Respondent*

BRIEF FOR RESPONDENT IN OPPOSITION

Respondent, Elizabeth Jane Hall, opposes the Petition for Writ of Certiorari filed by the Solicitor General on behalf of the United States of America and the District Director of Internal Revenue for the District of Kentucky to review the Judgment of the United States Court of Appeals for the Sixth Circuit.

In the alternative the respondent states that if the Court should grant the Petition for Certiorari, this case should be considered on its own merits and should not be held in abeyance until *United States* v. *Rambo*, 492 F. 2d 1060 (C.A. 6) and *Laing* v. *United States*, 406 F. 2d 853 (C.A. 2) 1974, are decided.

OPINIONS BELOW

The opinion of the United States District Court for the Western District of Kentucky and the opinion of the United States Court of Appeal for the Sixth Circuit are contained in the petition, pages 1a-10a.

JURISDICTION

A jurisdictional statement is set forth at page 2 of the petition.

QUESTIONS PRESENTED

I. Whether the Commissioner may terminate a taxpayer's taxable year under Section 6851 of the Code and assess taxes for the terminated period without issuing a notice of deficiency under Section 6212(a); and if the Commissioner fails to send the deficiency notice is the taxpayer barred from seeking injunctive relief by the Anti-Injunction Act?

II. Whether the instant case should be held in abeyance until the other pending cases are decided?

STATUTES INVOLVED

The statutes involved are set out in the petition, pages 13a-28a.

COUNTERSTATEMENT OF FACTS

Jane Hall's problems began when her husband, Sterling Hall, was arrested in Brownsville, Texas, convicted, and sentenced under the Young Adult Offender's Act for trafficking in marijuana. Following his confinement, Lieutenant Donald Powers, a Kentucky State Trooper, who apparently believes that a wife must necessarily be involved in her husband's illegal activities, obtained a Search Warrant and along with approximately ten State Troopers fell upon the home of Mrs. Hall, presented the Search Warrant, and thoroughly searched the premises. The search produced a "minuscule quantity" of drugs.

These drugs were found in obscure places, and Mrs. Hall has consistently stated that the drugs were the property of her husband and that she did not know these drugs were in her home. After the search was completed, Powers arrested Mrs. Hall and charged her with trafficking in marijuana, but he was obviously dissatisfied with the results of his criminal investigation because he decided to take further punitive action against Mrs. Hall by proceeding to the office of the Internal Revenue Service and advising the Regional Director that he had discovered the existence of a drug pusher in the person of Elizabeth Jane Hall.

Acting on this information, which was totally erroneous, the Internal Revenue Service proceeded to the home of Mrs. Hall on February 1, 1973, and hand delivered a letter that advised her that she owed the Internal Revenue Service $52,680.25 for the period

commencing January 1, 1973, and ending January 31, 1973. This incredible bill, according to Internal Revenue, was for the income that she had received from the sale of drugs during this thirty-one day period.

Mrs. Hall was astounded when the Agent for Internal Revenue demanded immediate payment in the amount of $52,680.25, and when she advised him she did not have the money, he proceeded to attach her property and to tow off her automobile. Shortly thereafter, notice was given by Internal Revenue that her car would be sold at a public auction.

When Mrs. Hall received notice that her assets were to be sold, she was literally helpless. Internal Revenue Service had not sent her a deficiency notice, which is a jurisdictional prerequisite to filing suit in Tax Court under Section 6861(b). Her total assets were minuscule compared to the amount of the tax bill. Therefore, she could not pay the assessment and file a refund suit in the District Court under the full payment rule of *Flora* v. *United States,* 362 U. S. 145 (1960); and because Internal Revenue Service had taken all of her assets there was no way for her to post an adequate bond. Thus, Mrs. Hall took the only alternative available to her and filed suit in the United States District Court and asked that Internal Revenue Service be enjoined from selling her property.

ARGUMENT

A. Response to Petitioner's Arguments On the Merits

The power to terminate a taxpayer's taxable year has been vested in the Commissioner of Internal Revenue for many years. However, the power was seldom used until recently when Internal Revenue Service expanded its operation and got into the business of stamping out drug traffic.[1] In the Petition for Certiorari, the United States at page 6 states there are seventy cases pending in Federal Court involving this question and for the fiscal year of 1973, more than 1,800 taxable years were terminated with assessments in excess of Sixty Million Dollars. From these statistics, it is obvious that Internal Revenue Service now considers itself a law enforcement agency and, as such, has started a nationwide campaign against individuals suspected of being in the drug business.

The respondent concedes stamping out drug traffic is a noble purpose but the respondent respectfully asks what happens when an innocent citizen is trapped in the web of bureaucratic zeal? The United States District Court in granting the preliminary injunction noted the respondent had literally been deprived of all of her assets and had been denied any remedy. The Sixth Circuit affirmed the decision of the United States District Court and the respondent respectfully submits

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[1]Silver, "Terminating the Taxpayer's Taxable Year: How the Internal Revenue Service uses it against narcotic suspects." 40 Journal of Taxation 110 (February, 1974).

these decisions are correct and accurate statements of the law and, therefore, there is no need to grant the Petition for Certiorari.

B. If Certiorari Is Granted, This Case Should Not Be Held in Abeyance Because the Facts of This Case Are Materially Different From the Facts of the Other Cases Now Pending Before This Court.

The respondent concedes there is an apparent conflict between the various Circuit Courts and should this Court grant certiorari in any of the pending cases, the respondent respectfully requests the instant case be considered on its own merits and not held in abeyance as requested by the petitioner. The respondent makes this request because her case is vastly different from the three principle cases now pending before this Court.

In *United States* v. *Rambo,* 492 F. 2d 1060 (C.A. 6, 1974) Petition for Certiorari pending, No. 73-2005, the respondent, Rambo, admitted he was a conduit for the passage of chemical compounds used to manufacture illegal drugs. Rambo had $12,661.25 in his bank account at Liberty National Bank, $2,200.00 in cash, three automobiles, and at the time of his arrest, he was in possession of enough tranquilizers to fill a briefcase.

In *Laing* v. *United States,* 406 F. 2d 853 (C.A. 2, 1974) Certiorari pending No. 73-1808, the Petitioner, Laing, was a resident of New Zealand and had entered the United States on a B-2 visa. When he attempted to leave the United States and to enter Canada, the Canadian officials refused him entry and when he returned to the United States, the Custom Officials found a suitcase containing $310,000.00 in the engine compartment of his automobile. Ultimately, the Internal Revenue Service assessed a tax against Laing in the amount of $195,985.55 for the period of January 1st to June 24, 1972.

In *Irving* v. *Gray,* 497 F. 2d 20 (C.A. 2), the petitioner, Irving, was a resident of Ibiza and when his involvement in the Howard Hughes hoax was discovered, Internal Revenue knew that Irving had obtained $650,000.00 from McGraw-Hill Publishing Company and that Merrill Lynch was holding certain funds on his behalf.

In the case at bar, it is obvious that Internal Revenue grabbed a figure out of the air, put it in a form letter, and proceeded to the home of Mrs. Hall to literally destroy her financially without regard to the requirements of the Internal Revenue Code or the due process requirements of the Constitution.

At no time has the Government offered any evidence to the District Court as to the basis or method of computation of its assessment for the terminated period, nor has the District Director offered any supporting evidence as to his finding that the respondent was involved in illicit drug activities.

Mrs. Hall had one Volkswagen, and less than One Hundred Dollars in the bank. She was not trying to leave the country, she was not residing outside the country, and she was not involved in a drug sales conspiracy.

This case dramatically illustrates the danger of allowing a bureaucrat the power and the opportunity to destroy a citizen without any due process protections. In fact in the instant case, the conduct of Internal Revenue Service and the conduct of the State Trooper, Powers, was so outrageous that the United States District Court not only enjoined them from the sale of the respondent's property but also enjoined them from trespassing on her property, and from harassing her or intimidating her in any manner. (A copy of the preliminary injunction may be found in the Petition at Page 5a.)

Under these circumstances it is not surprising the petitioner has requested this Court to hold up the Writ of Certiorari until the *Rambo* and *Laing* cases are decided. It would certainly be in the petitioner's interest to have the *Hall* case decided on the basis of the ruling handed down in *Rambo* and *Laing*.

The respondent respectfully submits the law is always tempered by the facts and the facts in the instant case are so grossly different from the facts of the cases cited above the respondent requests if certiorari is granted in any of the pending cases that this Court consider the instant case on its own merits.

CONCLUSION

For the foregoing reasons the Petition for Certiorari should be denied. Alternatively, the Respondent requests that this case be considered on its own merits and not held in abeyance until the other cases are decided.

Respectfully submitted,

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